



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 31, 1993

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
5805 North Lamar Boulevard
Austin, Texas 78773-0001

OR93-767

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ Your request was assigned ID# 22105.

The Texas Department of Public Safety (the "department") has received two requests for information relating to an investigation regarding the City of Slaton's police chief. Specifically, the requestors seek, respectively, "documents concerning a recently completed investigation involving Slaton Police Chief Barbara Fowler," and "all the documents and information pertaining to the Frederick Stan McCaleb file." You have submitted two affidavits to us for review (exhibits F and G). You object to release of this information under sections 552.103(a) and 552.108 of the act. As you have not provided for our review the remainder of the requested information (or representative samples thereof), we presume that it has been or will be made available to the requestor. See Open Records Decision No. 363 (1983).²

¹We note that the Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²You explain that the information submitted to us for review is maintained in a closed department investigation file. You advise us that this information has been made available to a City of Slaton attorney, councilmember, and the mayor and city administrator. You claim that disclosure of the two affidavits to these persons does not constitute prior release of the requested information. We agree.

When a governmental body voluntarily permits members of the public to examine information to which the act's exceptions to required public disclosure apply, it may not ordinarily seek to withhold the

Section 552.108 excepts from required public disclosure:

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

Where a law enforcement agency is actively investigating a matter, section 552.108 excepts from disclosure all information relating to the investigation except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)). You advise us that the requested information relates to a pending criminal investigation. Accordingly, we conclude that you may withhold exhibits F and G under section 552.108 of the act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Open Government Section

RG/GCK/rho

Ref.: ID# 22105
ID# 22171

Enclosures: Submitted documents

(Footnote continued)

same information unless prohibited by law from doing so. *See* Open Records Decision Nos. 518 (1989); 412 (1984); 400 (1983). However, it is well settled that information that is exempt from public disclosure under the act may be transferred between state agencies without destroying its confidential character. *See* Attorney General Opinions H-917 (1976); H-242 (1974); Open Records Decision Nos. 567, 561 (1990); 516 (1989); 272 (1981).

cc: Mr. Burle Pettit
Lubbock Avalanche-Journal
P.O. Box 491
Lubbock, Texas 79408
(w/o enclosures)

Mr. Joe Conger
KCBD-TV
5600 Avenue A
Lubbock, Texas 79404
(w/o enclosures)

Mr. Harvey L. Morton
250 South 10th
Slaton, Texas 79354